

T H E
CASE and OPINIONS
O F

James then Viscount of *Stair*, Lord President of the Court of Session, Sir *James Stewart* and Sir *John Nisbet*, in relation to the Creditors, apparent Heirs, Superiors, Vassals, Tacksmen, and Heirs of Tailzie or Entail of Persons forfeited for High Treason, inferring Corruption of the Blood, with my Lord *Stair* and Sir *James Stewart* their Explanations of the Act of Parliament 1690, still in Force, regulating and taking off the Rigour of Forfeitures as to these Creditors, Heirs of Entail, &c. in *Scotland*:

A N D

ACTS, or Clauses, or Articles in the Acts of Parliament of *Great Britain*, in relation to Persons forfeited for High Treason their Deeds and Conveyances in prejudice of the Crown, and in favour of Heirs, Creditors, Superiors, Vassals, Tenants, and Heirs of Tailzie or Entail, and the Relevancy required in the Indictments of High Treason, inferring Corruption of the Blood, for levying War against his Majesty.

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T H E
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My Lord Stair's Opinion of the Corruption of the Blood.

THOUGH Forfeitures in *Scotland* have been very frequent, the Offspring of such having ordinarily acquired Lands and Goods, and their Children succeeded them therein, without obtaining Restitution of their Blood: So that this Corruption of the Blood is rather to be thought a Specialty in some atrocious

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ous Treasons, by the Tenor of the Doom of the Forfeiture, than a general Consequence thereof. *Page of Instit. 423.*

My Lord Stair's Opinion, how far that could forfeit to which apparent Heirs might succeed.

Whereas it hath been said, That the apparent Heir being forfeited, the King hath Right to the Heritage to which he might succeed; it may be questioned, whether that may be extended to the apparent Heir, if he be forfeited during his Predecessor's Life; or if it be only in the Case, that the Heir apparent is forfeited after the Death of his Predecessor, where *de presenti* he may be Heir, there is no Doubt, if the Person forfeited should be fugitive, and survive his Predecessor; but the Heritage accrescing to him, wherein he might *de presenti* be infest, would fall under Forfeiture, tho' he was not actually infest; and it seems no less clear, that being forfeited, if he should dy before his Predecessor, that his Brother, or Collaterals, might succeed to their Father, or any other to whom the forfeited Person, if he had survived them, would have succeeded; it is more doubtful whether his Descendants could, if any were, for these would exclude the Collaterals; and there seems no Reason to exclude them from their Grandfather's Heritage, not being disabilitate: And seeing I have not found it extended further, I conceive it more favourable that the Heir apparent dying before his Predecessors, should not hinder his Descendants to succeed to that Predecessor; but unless the Forfeiture did incapacitate the Predecessor to dispose up-
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on his own Estate, the Forfeiture in that Case would be unprofitable: Yet seeing we have no Complaints of Exheredation in *Scotland*, but that Parents may freely dispose of their Estates at their Pleasure, it would be hard to bind up the Parent more in relation to the Fisk than to his own Child, unless Fraud, to prevent the Effect of the Forfeiture, without a rational Cause, do appear. *Page 424.*

Apprisings are excluded and qualified with the Backbonds and Obligements of the Appriser, as in personal Rights, which are valid against singular Successors, as a Backbond, that an Apprising should not be prejudicial to another Party's Right, was found relevant against the Appriser's singular Successor, the King's Donator of the Appriser's Forfeiture. *July 31. 1666. the Earl of Southesk contra Marquis of Huntly, Page of Inst. 397.*

Sentence of Forfeiture being pronounced, it is declared irreducible upon any Nullity in the Process upon which it proceeded, till the Crime be remitted by the King, or the Party tried and acquit thereof; but Restitution shall only be granted by way of Grace to the Party forfeited, or their Posterity, *Parl. 1584. Cap. 135.* which was found not to extend to Dishabilitation of the Son of the forfeited Person, but that it might by Act of Parliament be taken off, without Citation of any Party who had acquired Right upon the Dishabilitation from the Donator, which fell in consequence. *February 24. 1665. Douglas and Sinclair contra L. Wedderburn.*

The Doom or Decreet of Forfeiture, when passed in Parliament, gives immediate Access to the

Mails and Duties of the Estate possessed by the forfeited Person, and needs no Declarator, because it is a Decreet of Parliament, and hath the like Effect as Ward, which requireth no Declarator. *January 6. 1681. Home contra Home.* The like, tho' the Doom of Forfeiture, was by the Justices in Absence, seeing it was ratified in Parliament; not by Ratification passing of Course, but by a publick Law, ratifying that Forfeiture by the Justices, as if it had been done in Parliament, and all such Forfeitures by the Justices, being for open Rebellion, and rising in Arms against the King. *December 15. 1680. Gordon of Troquhen contra a Wadsetter of Barscob.*

My Lord Stair's Opinion of the Act of Parliament 1690, concerning Forfeitures with respect to Creditors and Heirs, &c.

The 33^d Act, Parl. 1. Sess. 2. King William and Queen Mary, Anno 1690, though more extensive in prejudice of the Royal Prerogative, wants not Ground and Example, that nothing should be forfeited which could not have been alienate by the forfeited Person; and therefore it is statute, That no Forfeiture thereafter shall prejudice Tacksmen, Creditors, Superiors, Vassals, Heirs of Entail, Husbands or Wives of forfeited Persons, which shall defend Tacksmen possessing before the Treason, it being open and notour, or before the Process, if the Treason was latent, and that the forfeited Estate shall be subject to all real Actions and Claims, though they be not raised within the five Years preceeding the Forfeiture, excepting Feu-duties, Annual.

Annualrents, and annual Prestations not insisted for within the five Years, and shall be subject to all Creditors real or personal, contracting prior to the Treason being notour, or to the Citation in Forfeiture being latent, the Debts being always upon Record, by being registrate, or Diligence done thereupon, excepting Debts contracted during the open Rebellion and rising in Arms, and that no Heir of Entail shall profit more [should be forfeit more] than what he could affect his Estate with, so that the Infestment of Tailzie be registrate conform to the Act of Parliament 1685; and all the Sub-vassals Rights are confirmed: Yet this will not import, that the ordinary Casualty of Recognition is hereby taken from the King, more than from the Subjects by Decrees against the King, which, without Forfeiture, would recognise. *Page of Instit. 424.*

Sir James Stewart and Sir John Nisbet their Opinions concerning Forfeitures.

Stewart. A Forfeiture by Sentence of Parliament needs not be declared; but if by Sentence of Justiciary, it is thought it should be declared, *vid. Instit. Page 424.*

Stewart. There is no Difference with us betwixt the *Ante-nati* and *Post-nati*, in the Case of Treason committed by the Father; for the Disabilitation of Children is not *ex traduce*, but it is the Rigour of the Law that taints all the Blood.

Stewart. If a Man, having Children by an Heiress, come to be forfeited, the Children must be rehabilitate before they can succeed to their Mother; but

but it were great Rigour to refuse to rehabilitate them. Thus the Husband of an Heiress being forfeited, his *jus mariti*, and also Courtesy, falls to the King; but whether she might dispoſe the Fie without her Husband's Conſent, in caſe of his ſurviving the Forfeiture, may be doubted; but there appears no Law in the contrary. *Page of the Answers 122, 123.* The Act 1690 further clears this Caſe.

Sir John Nisbet, in the Answers to his Doubts, Page 316. propoſes a Queſtion thus :

Nisbet. If, by our Law, the Poſterity of Traitors be diſabled *ipſo jure*, both *Ante-nati* and *Post-nati*, as to any Eſtate pertaining to themſelves, which is not proteſtious from the Father after Treason? *Ratio dubitandi*, The Doom of Forfeiture being only Forfeiture for Life, Lands and Goods, without Mention of the Poſterity, and *noxa caput ſequitur*; and *lex Julia majeſtatis* is but the Municipal Law of the *Romans*, and is not authoriſed by any Act of Parliament or Cuſtom of ours. The Act of Parliament King *James V.* and the Act of Diſhabilitation of the Poſterity of the Earl of *Bothwell*, and Rehabilitation of *John Stewart*, may be conſidered.

Stewart. By our Law the Blood of Traitors is tainted, and their Poſterity diſabled *ipſo jure*, which would reach both *Ante-nati* and *Post-nati*; but it is not thought that it would deprive them, with us, of any proper Eſtate, well ſettled in their Perſons, independent on the Father's Forfeiture. As for the Law, *Cod. l. 5. tit. ad legem Juliam majeſtatis,*
Lex

Lex ista manifestè seipsam damnat, & ab omnibus damnanda est: nam quanam imperatoria lenitas, qui vitam in supplicium concedit. Page 316.

Another Question and Answer thus:

Nisbet. A Father having disposed his Estate to his Son, with Reversion and Power either to redeem or dispoise, *Quer.* If the personal Faculty may, notwithstanding, be comprised during the Father's Life, and may be used even after the Death of the Father? There is the same Question as to Forfeiture.

Stewart. Where a Father dispoises to a Son, with a Power reserved to alter, the Lands may be comprised from the Father by a Creditor, and so he would also forfeit them in the Case of Treason. Page 123.

Quer. If it may not be thought, that a Creditor of the Father adjudging the Lands, after the Father's Death as well as before, would be effectual, and so the Father could forfeit? therefore may it not follow, supposing the Son to be only in the Rebellion, and not the Father, that the Lands so disposed, with Power to alter, could not fall under the Forfeiture of the Son, though he had survived his Father and infest; unless the Father in his Lifetime, who retained the Power of Disposal, had not exerted that Faculty in favour of any other? And so an Heir, or an Heir of Tailzie, can forfeit no more than what he could alienate, or what he could affect the Estate with; and this Son could neither alienate or affect the Estate in prejudice of the Deeds of the Father, if he had exerted the Faculty as Fiar.

Stewart.

Stewart. If a Legatar commit Treason before the Testator's Decease, the Legacy will be as void as if the Legatar had died; for a Legacy gives no Right unless the Legatar survive the Testator.

Follow Question and Answer thus :

Nisbet. If a Person, being named Executor and universal Legatar, shall be forfeited before he be confirmed, will his Interest forfeit to the King?

Ratio dub. Albeit a Legacy will forfeit, yet in this Case the Legacy being universal, and being subjoined to the Nomination, is of the Nature of Institution, which being an Office, cannot forfeit.

Stewart. It may be thought, that this universal Legacy not confirmed, should not forfeit; for if this Executor dy not confirming, he does not transmit, and what he does not transmit he should not forfeit; but this holds not as to apparent Heirs in the late Rigour of Forfeitures. Page 183.

Nota, By the late Rigour is meant before the Act of Parliament 1690.

Nisbet. A Bond being assigned by a Rebel, and the Assignment not intimate before the Rebellion, **Quer.** Whether the Assigny or the Donator will be preferred? **Ratio dubitandi,** That the Assignment denudes the Cedent, and the Intimation is not necessary, but to exclude another Assigny; and the Rebel, by his Rebellion, does not transmit, but admits and forfeits any Right that he has, which being *in nullius bonis*, is *domini regis*; whereas it cannot be said, that the Bond was *in nullius bonis* after the Assignment, seeing it is then *in bonis cessionarii*.

Stewart.

Stewart. An Assignation by a Rebel, tho' not intimate before the Rebellion, doth certainly denude the Granter, and in all good Law should be sufficient to exclude the Donatar, unless he prevent the Assigny by Diligence and uplifting; for Intimation is only to secure against another Assigny; but as we make Intimation necessary to complete the Right, all this may be doubted: *Page of Answers 233.*

Stewart. The Author, meaning *Nisbet*, proposes here a Case in *Latin: Sempronius* had two Sons, the eldest, in his Father's Life, is found guilty of Treason; but both being alive at the Father's Decease, the Question is, Who succeeds, the second or the first? And he puts a Difference of the eldest Son's committing the Treason after the Father's Death, or before; for if after, then he was *hæres habitu*, and so forfeits to the Fisk; but if before, the Succession could not devolve upon him, and therefore must fall to his younger Brother, especially since it were hard in this Case to make the innocent Father forfeit his Estate. But though this Reason be probable, says Sir *James*, yet the Rigour of Forfeitures would have prevailed.

The second Question is, *If a Remission should be granted to the eldest*, would this restore him against his Brother? But this supposes the Brother to have succeeded, which in the Rigour of Forfeitures could not be; but if he had succeeded, the elder Brother's After-restitution *ex gratia* could not prejudice the younger Brother entred; but if at that Time the younger Brother were not entred, the elder, upon his Remission, might enter.

The Author puts a farther Case, of the younger

Brother's being served before the elder's Succession; but being infest in part, and not in all the Lands, when the elder got his Remission; and he divides the Succession to the younger for what he is infest in, and to the elder for what remained: But in good Law, says Sir *James*, the younger being first served in special, and to all the Lands, should carry all of them, notwithstanding the interveening Remission; for it is the Service that gives the Right, and what follows is but Execution. *Page in the Answers 130.*

Quer. May it not be thought, that seeing here Sir *James Stewart*, speaking of the Rigour of Forfeitures, means before the Act 1690, yet that now, though the eldest Son be on Life the Time of the Father's Death, but being forfeit before, would not exclude the younger Brother from succeeding as then lawful Heir to his Father, who had not disposed; and that nothing could forfeit but what Right might be in the Person of the eldest Son, whereupon he might have been *de presenti* infest, or that otherwise he might alienate and dispose upon, or affect the Estate with; and if his Descendants, if any were, might not succeed to their Grandfather, and so exclude Collaterals, who otherwise would succeed: Yet still that the innocent Father might dispose of his own Estate as he pleased. And if Sir *John Nisbet's* Opinion should not hold, that the eldest Son getting a Remission *ex gratia*, should be preferred in the Lands wherein the younger Brother, though served Heir in special, but was not infest, which may hold in this Civil Case: A Son succeeding to his Mother and infest, but dying without Issue, the Lands, as Heir

to him, would go to the Father's *Agnati*, and not to the Heirs on the Mother's Side; yet if the Son was only served, but not infest as Heir to his Mother, may be thought should alter the Case, and make the Succession go to the Heirs on the Mother's Side, to whom the *primus investitus* did belong, because the Father's *Agnati* could not be infest as Heirs to these last infest. And that in both these Cases, *nulla fasina, nulla terra*, should strictly hold, being most agreeable to Justice and Equity; and in *England, materna maternis, paterna paternis*, do take place. *Vid. Page 2 and 3.*

Sir James Stewart's Explanation of the Act of Parliament 1690.

This Act of Parliament hath now regulate this whole Matter of Forfeitures, as to Creditors, Vassals, and Heirs of Tailzie; yet not so thoroughly as might have been expected after the great Abuse of Forfeitures. The Act statutes and ordains, That no Forfeiture shall prejudice *Tacksmen, Creditors, Superiors, or Heirs of Entail therein mentioned, nor Husband or Wives of the Persons forfeited; but that all Tacks clad with Possession before committing of the Treason, where the Treason is open and notour, or before Citation in the Process of Forfeiture, where the Treason is latent, shall defend against the Forfeiture of the Setter.* But what Reason for this Distinction, if the Tack be set before committing of the Crime, and Possession duly apprehended before Sentence? for these seem to be the juster Measures, tho' Possession be not apprehended

hended before the Crime when notour, or before Citation when latent.

Then the Act adds abruptly, *the Debts being always upon Record, by being registrate, or Diligence done thereon*; but expresses not distinctly, if this recording of Diligence should be as in the Case of Tacks before the Crime when notour, or before Citation where the Crime is latent, although this appears to be the Meaning, but without any Reason. If the Debt be lawfully contracted before the Crime, and the Creditor wholly innocent of the Crime, there is no Reason he should forfeit his Debt for not recording: A Point arbitrary to the Creditor, and not enjoined by any Law.

The Act goes on, *And that all Estates forfeited should be subject to all real Actions and Claims against the same, though they be not raised and insisted in within the six Years (should be five Years) preceeding the Forfeiture.* And this takes off indeed the Rigour of the quinquennial Act, *James VI. Parl. 9. Cap. 2.* but then it “excepts bygone
“Feu-duties, Annualrents, and other annual Prestations, for which no Diligence done within the
“said five Years.” But what Reason for this Exception, when nothing more ordinary nor innocent, than to forbear exacting these Duties and Prestations, especially when the Right thereof is commonly so well established.

Then the Act goes on, “The Estates forfeited
“shall be subject to all true and lawful Creditors,
“whether personal or real, for their principal Sums
“allenary.” But why not also for their bygone Annualrents, if, as it follows in the Act, “their
“Debts and Claims being contracted and founded
“prior

“ prior to the committing of the Treason, where
 “ the Treason is open, or prior to the Citation,
 “ where the Treason is latent, as was above di-
 “ stinguished.” But here there is no Word of *record-*
ing, which seems to be required above; and in ef-
 fect this Part of the Act seems to be rather the Rule
 for Debts, than what is above said about *recording*.

The Act subjoins an Exception of Debts con-
 tracted after the open Rebellion and rising in Arms;
 but that Exception was not needful, because not
de regula, which is only of Debts contracted before
 the Treason, when open and notour.

The Act goes on, “ That forfeited Estates shall
 “ likewise be subject to all the Casualties due to the
 “ Superior, either before the Forfeiture or there-
 “ after, by opening the Fie; and that in the same
 “ Manner as if the said Tacks, Actions, Debts and
 “ Casualties, had been set, raised, contracted, due,
 “ and confirmed under the Great Seal before com-
 “ mitting of the Crime.” And this Clause has a
 Retrospect upon all above. But what should be
 meant by Casualties due to Superiors, either be-
 fore the Forfeiture or thereafter, by the opening
 the Fie? Certainly this *thereafter, by opening the*
Fie, if by the Forfeiture, requires a Distinction;
 but then the Act again *excepts annual Prestations*,
 which is above said to be groundless.

As to Tailzies, the Act secures them, if re-
 gistrate, conform to the Act of Parliament 1685;
 but what it adds, “ That the Deed, whereby a
 “ Faculty reserved in a Tailzie is exerced, should
 “ be insert in a publick Register, or contained in a
 “ Contract of Marriage,” is groundless, since the
 Deed may be lawful and also innocent, tho’ nei-
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ther in a Register nor in a Contract of Marriage. But see the Act, for in this Part of it there are also Words wanting.

But, upon the whole, it had been a shorter and clearer Act, to discharge the Pain of Forfeiture even in Treason; for *Death* and *Escheat* seem to be sufficient in all Crimes, and Escheat also with Death too much, seeing Death may justly be reckoned the sufficient, as well as the just Punishment of any Crime whatsoever; and what more is inflicted doth only affect and afflict the innocent, but signifies nothing as to the restraining of the Crime. And this appears to have been the Law of God, That the Son should not suffer for the Father's Transgressions. *Page 130, 131.*

Thus you have before you at once the Substance, if not all that is material, contained in the second Edition of the *Institutions of the Law of Scotland*, and in Sir *James Stewart's Answers to Dirleton's Doubts*, in relation to Forfeitures, with respect to Creditors and Heirs of Entail, &c. and this excellent Act 1690, still in Force, as not being altered, regulates all former Acts thereanent, by taking off the Rigour of the quinquennial, reviving and restoring the rescinded Act 1644, and repealing the general Act rescissory, and is yet more extensive in favour of Creditors, Heirs, &c. So the Acts of Parliament made in the Parliament of *Great Britain* since, may be thought are no less, but rather more extensive in favour of such Superiors, Vassals, Creditors, Tenants, and others, who shall live peaceably, as appears by the Articles and Clauses in the Acts of the Parliament of *Great Britain*, as follow.

ACTS.

ACTS, or Clauses, or Articles in the Acts of Parliament of Great Britain, from the Union till the Year 1745, in relation to Persons forfeited for High Treason, their Deeds and Conveyances in prejudice of the Crown, and in favour of Heirs, Creditors, Superiors, Vassals, Tenants, and Heirs of Tailzie or Entail.

And first, the Clause or Article in Act *Anno 7^{mo} Annæ, cap. 21.* for improving the Union of the two Kingdoms.

Clause or Article in said Act runs thus :

PROvided always, That where any Person now is, or shall be, before the said first Day of *July* 1709, seized of any Messuages, Lands, Seignories, Rents, Tenements or Hereditaments in *Scotland*, of an Estate Tail, that is to say, an Estate Tailzie, affected with irritant and resolute, or prohibitive Clauses, and is, or, before the said first Day of *July*, shall be married, if any Issue of that Marriage be living, or there be Possibility of such Issue at the Time of the High Treason committed, that then, in such Case, the said Messuages, Lands, Seignories, Rents, Tenements and Hereditaments, shall not be forfeited upon the Attainder of such Person for High Treason, but during the Life of the Person so attainted only ; so that the Issue and Heirs in Tail of such Marriage shall inherit the same, the said Attainder notwithstanding.

And by another Article or Clause of said Act it is provided thus : Provided always, and be it further

ther enacted by the Authority aforesaid, That after the Decease of the Person who pretended to be Prince of *Wales* during the Life of the late King *James*, and since pretends to be King of *Great Britain*, and at the End of the Term of three Years after the immediate Succession to the Crown, upon the Demise of her present Majesty, shall take Effect, as the same is and stands limited by an Act made in the first Year of the Reign of their late Majesties King *William* and Queen *Mary*, entituled, "An Act for declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown;" and by another Act made in the twelfth Year of the Reign of his late Majesty King *William III.* entituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject," no Attainder for Treason shall extend to the disinheriting of any Heir, nor to the Prejudice of the Right or Title of any Person or Persons, other than the Right and Title of the Offender or Offenders, during his, her, or their natural Lives only; and that it shall and may be lawful to every Person or Persons, to whom the Right or Interest of any Lands, Tenements or Hereditaments, after the Death of any such Offender or Offenders, should or might have appertained, if no such Attainder had been, to enter into the same.

The Force and Effect of this last Article is suspended until the Death not only of the said Pretender, but also of his Sons, by the Act made the 17th Year of the Reign of King *George II.* the Clause or Article thereof runs thus:

And whereas in and by the said recited Act of the

the seventh Year of the Reign of her late Majesty Queen *Anne*, it is provided and enacted, That after the Decease of the Person who pretended to be Prince of *Wales* during the Life of the late King *James*, and since pretends to be King of *Great Britain*, and at the End of the Term of three Years after the immediate Succession to the Crown, upon the Demise of her said late Majesty, should take Effect, no Attainder for Treason should extend to the disinheriting of any Heir, nor to the Prejudice of the Right or Title of any Person or Persons, other than the Right or Title of the Offender or Offenders, during his, her, or their natural Lives only; and that it should and might be lawful to every Person or Persons, to whom the Right or Interest of any Lands, Tenements or Hereditaments, after the Death of any such Offender or Offenders, should or might have appertained, if no such Attainder had been, to enter into the same. Be it further enacted by the Authority aforesaid, That the said Provision so made by the said last recited Clause, shall not take place, or have any Operation, Force or Effect whatsoever, until after the Decease not only of the said Pretender, but also of his eldest, and all and every other Son and Sons.

Articles and Clauses in the Act of Parliament of King George I. Anno regni primo, cap. 19. for encouraging all Superiors, Vassals, and Tenants in Scotland, &c. and concerning Heirs of Entail and Creditors of forfeited Persons.

Whereas the Person, who, in the Life of the late King *James*, pretended to be Prince of *Wales*, and since his Decease has taken upon him the Stile and Title of King of *England*, by the Name of *James III.* and King of *Scotland*, by the Name of *James VIII.* or the Stile and Title of King of *Great Britain*, being bred in the Principles of Popery and Tyranny, has presumed to declare his Intention to make an Invasion upon *Scotland*, or some other Part of his Majesty's Kingdom of *Great Britain*, or his other Dominions, meaning to seduce his Majesty's Subjects from their Duty and Allegiance, and to overturn the Settlement of the Succession in the Protestant Line, upon which the Subversion of the Reformed Religion in these Kingdoms, and Ruin of the Liberty of the Subject, must follow of necessary Consequence: And whereas, in such Conjunction especially, it is most just to punish rebellious Subjects, and at the same Time to reward such as continue firm and loyal to his Majesty's Person and Government; therefore be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That if any of his Majesty's Subjects of *Great Britain*, having Lands or Tenements in *Scotland*,
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in Property or Superiority, has been, or shall be guilty of High Treason, by holding, entertaining, or keeping any Intelligence or Correspondence, in Person, or by Letters, Messages or otherwise, with the said Pretender, or with any Person or Persons employed by him, knowing such Person to be so employed, or shall, by Bill of Exchange or otherwise, remit or pay any Sum or Sums of Money, for the Use or Service of the said Pretender, knowing such Money to be for such Use or Service, and that whether the said Facts or Things be done within or without this Realm, or has been or shall be adherent to the said Pretender in this Realm, giving him Aid or Comfort in this Realm, or elsewhere, every such Offender, who shall be thereof duly convicted and attainted, shall be liable to the Pains, Penalties and Forfeitures for High Treason. All and every Vassal and Vassals in *Scotland*, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors, holding Lands or Tenements of any such Offender, who holds such Lands or Tenements immediately of the Crown, shall be vested and seised, and are hereby enacted and ordained to hold the said Lands or Tenements of his Majesty, his Heirs and Successors, in Fie and Heritage for ever, by such Manner of Holding as any such Offender held such Lands or Tenements of the Crown, at the Time of the Attainder of such Offender; and where Lands or Tenements belong to any such peaceable and dutiful Subjects to his Majesty, his Heirs or Successors, ly within any Regality or Constabulary in *Scotland*, the same shall be, and they are hereby dissolved from every such Regality or Constabulary for ever.

ever. And in like manner, all and every Tenant and Tenants in *Scotland*, who shall continue peaceable, and in dutiful Allegiance to his Majesty, his Heirs and Successors aforesaid, bruiking and occupying any Lands, Mills, Mines, Woods, Fishings, or Tenements, as Tenant or Tenants, Tackfman or Tacksmen, from and under any such Offender, shall, and they are hereby ordained to bruik and occupy all and every such Lands, Mines, Mills, Woods, Fishings and Tenements, for the Space of two Years or Crops, to be accounted from and after such Attainder, freely without Payment of any Rent, Duty or Service, for the said two Years or Crops. And the Court of Exchequer in *Scotland* is hereby authoris'd and required, on Production of any such Attainder, to revise, compound, and pass Signatures, and that without paying any Composition, in favour of every such Vassal or Vassals, and his, her, or their Heir or Heirs, of the said Lands and Tenements above mentioned respectively, to be holden of his Majesty, his Heirs and Successors, in Fie and Heritage for ever, and by such Holdings as are above mentioned, with Clauses of *Novo-damus*, and (where such Lands or Tenements hold Ward or Feu *cum maritagio*, or with Clauses irritant) with Change of Holdings from Ward to Tax-ward, according to the Rules now observed in the Court of Exchequer in *Scotland*, dispensing with Recognition, and Clauses irritant in favours of the Crown in time coming, in the most ample and best Form, to the end that Charters and Infeftments may be thereupon duly expedé.

And be it further enacted by the Authority aforesaid, That if any Subject of *Great Britain*, holding

ing Lands or Tenements of a Subject Superior in *Scotland*, has been, or shall be guilty of such High Treason or Treasons as aforesaid, every such Offender, who shall be thereof duly convicted and attainted, shall be liable to the Pains, Penalties and Forfeitures for High Treason, and his Lands or Tenements, held of any Subject Superior in *Scotland*, shall recognise, and return into the Hands of the Superior, and the Property shall be, and is hereby consolidated with the Superiority, in the same Manner as if the same Lands or Tenements had been by the Vassal resigned into the Hands of his Superior *ad perpetuam remanentiam*. And in case any Tenant or Tenants, Tacksman or Tacksmen, bruiking and occupying any Lands, Mines, Mills, Woods, Fishings or Tenements, being guilty of such High Treason or Treasons as aforesaid, and shall be thereof duly convicted and attainted, the Title by which all and every such Tenant or Tenants, Tacksman or Tacksmen, does bruik or occupy as aforesaid, shall cease and become void, and the Lands, Mines, Mills, Woods, Fishings and Tenements so bruiked and occupied, together with the single and Liferent Escheat of such Tenant or Tenants, Tacksman or Tacksmen, shall return to, and be enjoyed or possessed by the Person or Persons from or under whom such Title is derived respectively, who shall continue peaceable and dutiful to his Majesty, his Heirs and Successors.

And for preventing of Frauds or Collusion, in order to evade this Act, be it further enacted by the Authority aforesaid, That if the Superiors, Vassals or Tenants, to whom the Lands, Mines, Mills, Woods, Fishings and Tenements above mentioned,
are

are declared and ordained to belong, shall not within six Months, to be reckoned from the Time of the Attainder of the Offenders respectively, obtain themselves inest, or do Diligence really and without Collusion for attaining Possession; in every such Case the Forfeitures shall belong to his Majesty, his Heirs and Successors.

Provided always, That none of his Majesty's Subjects, whether Superior, Vassal or Tenant, shall have the Benefit of this Act, excepting such who, being lawfully called out, or required to join with his Majesty's Host in opposition to the said Pretender or his Adherents, shall do the same, or who (not being so called out or required) shall continue peaceable and dutiful to his Majesty, his Heirs and Successors.

And whereas there is Reason to believe, That several Persons, intending to commit High Treason or Treasons as aforesaid, have made Tailzies, Entails, or Settlements of their Estates in favours of their Children or other Heirs of Tailzie, or Conveyances, Securities or Alienations, with a fraudulent Intent to avoid the Punishment of the Law due to the Offences above mentioned: Be it therefore enacted by the Authority aforesaid, That all Tailzies, Entails, Settlements and Conveyances in favours of the Granter's Children, or other Heirs of Tailzie, or Trusts, Securities or Alienations of any Estates or Inheritances made in *Scotland*, in the Name of whatsoever Person or Persons, since the first Day of *August* 1714, or that shall be made there in time coming by any Person or Persons, who shall be convicted or attainted of any such High Treason or Treasons as aforesaid, shall be, and they are hereby

by declared void and null to all Intents and Purposes, excepting such Deeds, Securities and Aliens, as have been made since the Time aforesaid, or shall be made there in Time coming, for just and onerous Causes, the said onerous Causes being always otherwise instructed than by the Writings themselves.

And for the further Encouragement of becoming Zeal and Bravery in his Majesty's and the Country's Service, against the said Pretender and his Adherents, be it also further enacted by the Authority aforesaid, That if it shall happen any Subject of *Great Britain*, having Lands or Estates in *Scotland*, held Ward of the Crown, or of any Subject Superior there, as well Vassal as Sub-vassal, to be killed in his Majesty's Service against the said Pretender and his Adherents, or to receive Wounds, whereof any such Person or Persons shall afterwards dy, the Heir of every such Person or Persons shall be, and is hereby enacted and ordained to be free of the Duties and Casualties of Ward, Relief and Marriage, for or on account of such Lands or Estate; excepting only, That it shall and may be lawful to his Majesty, his Heirs and Successors, where the Lands of such Person or Persons hold immediately of the Crown, and to the immediate Superior, where such Lands hold of a Subject, to appoint the said Casualties of Ward, Relief and Marriage, to be applied for Provision of the Wife, or younger Child or Children unprovided for, or not competently provided for, (due Consideration being always had to the Condition of the Heir.)

And because it is hard that any Creditor, remaining in peaceable and dutiful Allegiance to his Majesty,

Majesty, his Heirs and Successors, should suffer by the Rebellion of his Debitor, be it therefore further enacted by the Authority aforesaid, That no Conviction or Attainder, on account of the High Treason or Treasons above mentioned, shall hurt or exclude the Right or Diligence of any such Creditor remaining peaceable and dutiful, for Security or Payment of any true, just and lawful Debt, contracted before the Commission of any of the aforesaid Crimes.

Provided always, and be it enacted by the Authority aforesaid, That no Person or Persons, who may reap, or have any Benefit or Advantage by the Attainder, Conviction, or Forfeiture of any Person or Persons, by virtue of this Act, shall be capable of being a Witness or Witnesses against any Person or Persons, by whose Attainder, Conviction or Forfeiture, any Benefit shall or may accrue to such Witness or Witnesses.

Some CASES, Facts and Deeds, which more frequently may be fallen into, inferring High Treason and Corruption of the Blood.

W Hereas, by the first Article or Clause in the aforesaid Act of Parliament made in the seventh Year of her said late Majesty Queen Anne, for improving the Union of the two Kingdoms, it is enacted, That from and after the first Day of July 1709, such Crimes and Offences which are High Treason, or Misprision of High Treason within England, shall be construed, adjudged, and taken to be High Treason and Misprision of High Treason within Scotland; and that from thenceforth no Crimes

Crimes or Offences shall be High Treason, or Misprision of High Treason within *Scotland*, but those that are High Treason or Misprision of High Treason in *England*.

And by another Article or Clause of said Act it is enacted, That after the said first Day of *July* 1709, all Persons convicted or attainted of High Treason, or Misprision of High Treason in *Scotland*, shall be subject and liable to the same Corruption of Blood, Pains, Penalties and Forfeitures, as Persons convicted or attainted of High Treason or Misprision of High Treason in *England*; and that in *England*, where no express Law is against a Crime, no Transgression; therefore follow some of the principal Causes, Facts and Deeds, mostly to be guarded against and readiest to be fallen into, which inferreth High Treason and Corruption of the Blood for Rebellion.

1. By an Act made *George I.* an Article thereof is thus: Provided always, That this Act, or any Thing therein contained, shall not extend to alter the Place of Indictment or Trial, unless the Person or Persons indicted, shall, upon his or their Trial, be proved to have been actually in Arms, or to have personally joined with others when in Arms, in the Rebellion or War charged in the Indictment; but upon Failure of such Proof, such Person or Persons shall be acquitted and discharged of and from such Indictment, in the same Manner, and to the same Intents and Purposes only, as he or they should have been, in case this Act had never been made. *Cap. 3.*

2. That as by the foresaid recited Act, King *George I.* the holding, entertaining, or keeping a-
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ny Intelligence or Correspondence, &c. with the Pretender, as before particularly recited in the said Act, is High Treason, so by the Act in the seventeenth Year of the Reign of King *George II.* the same holding of, or keeping any Correspondence with the Pretender's eldest Son, or any of his Son or Sons, is High Treason. And what inferreth this Correspondence, the Particulars thereof are the same as before set forth in the said Act of King *George I.* Page 19 hereof.

3. By Act 6^{to} *Anna*, cap. 7. for the Security of her Majesty's Person and Government, and of the Succession of the Crown of *Great Britain* in the Protestant Line, the first Article or Clause thereof is as follows: Whereas by the happy Union of *England* and *Scotland*, it is become necessary to make divers Alterations in relation to an Act passed in the Parliament of *England*, in the fourth Year of the Reign of her present Majesty, (whom God long preserve) entituled, *An Act for the better Security of her Majesty's Person and Government, and of the Succession to the Crown of England in the Protestant Line*, and to extend the Provisions of the said Act throughout the whole united Kingdom, for the better Security of our most gracious Sovereign's Person and Government, and of the Succession to the Crown of *Great Britain* in the Protestant Line, as it is now by the Laws and Statutes of this Realm settled, limited and appointed; be it therefore enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That if any Person
or

or Persons shall maliciously, advisedly and directly, by writing or printing, maintain and affirm, that our Sovereign Lady the Queen, that now is, is not the lawful and rightful Queen of these Realms, or that the pretended Prince of *Wales*, who now stiles himself King of *Great Britain*, or King of *England*, by the Name of *James III.* or King of *Scotland*, by the Name of *James VIII.* hath any Right or Title to the Crown of these Realms, or that any other Person or Persons have or hath any Right or Title to the same, otherwise than according to an Act of Parliament made in *England* in the first Year of the Reign of their late Majesties King *William* and Queen *Mary*, of ever blessed and glorious Memory, entituled, *An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*; and another Act made in *England* in the twelfth Year of the Reign of his said late Majesty King *William III.* entituled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*; and the Acts lately made in *England* and *Scotland* mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with and by the Authority of Parliament, are not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown, and the Descent, Limitation, Inheritance and Government thereof: Every such Person or Persons shall be guilty of High Treason, and being thereof lawfully convicted, shall be adjudged Traitors, and shall suffer Pains of Death, and all Losses and Forfeitures, as in Cases of High Treason.

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